

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Ricardo Matthews and Cleo Frank
Jackson, et al.,

Plaintiffs,

vs.

Town of Autaugaville, et al.,

Defendants.

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2:06cv185-MHT

**DEFENDANTS REPLY TO PLAINTIFF'S BRIEF IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS**

COME NOW Defendants, by and through counsel, and state the following as their reply to Plaintiffs' Brief in Opposition to Defendants' Motion to Dismiss:

1. To succeed in their procedural due process claim, Plaintiffs must show a lack of meaningful post deprivation remedy because Plaintiffs are alleging that city officials acted in contravention to establish procedures regarding the activities of police officers prior to certification.
2. In Plaintiffs' Brief in Opposition to Defendants' Motion to Dismiss, Plaintiffs failed to show that the State of Alabama refused to apply a meaningful post deprivation remedy. In other words, Plaintiffs fail to show how the Municipal Court of Autaugaville or the Circuit Court of Autauga County failed to cure the alleged deprivation.
3. Plaintiffs' Complaint indicates that Plaintiffs were provided a later procedural remedy by challenging the charges in municipal court for the City of Autaugaville,

Alabama, or appealing the case, de novo, to the Circuit Court of Autauga County. Plaintiffs were provided with a procedural remedy, based upon Plaintiffs' Complaint, and Plaintiffs' allegations are facially deficient and do not set forth a valid procedural due process claim.

4. Likewise, Plaintiffs' equal protection claim fails. Plaintiffs claim they were treated differently than "other citizens of the State of Alabama." (Page 5 of Plaintiffs' Brief in Opposition to Defendants' Motion to Dismiss). Plaintiffs are not similarly situated with all individuals in the State of Alabama. All individuals in the State of Alabama do not drive through Autaugaville, Alabama, exceeding the speed limit or committing a moving violation. Based on Plaintiffs' Request for class certification, which necessarily denotes commonality among the claimants, all individuals driving through Autaugaville, Alabama, exceeding the speed limit or committing a moving violation, were treated the same. Based on Plaintiffs' Complaint, Plaintiffs have not suffered an equal protection violation.

Wherefore, because Plaintiffs' Complaint does not state a valid procedural due process claim or a valid equal protection claim, Plaintiffs' Complaint must be dismissed with prejudice.

/sRick A. Howard
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CERTIFICATE OF SERVICE

I hereby certify that I have this day sent by mail, postage prepaid, an exact copy of the foregoing document to:

Jon C. Goldfarb
Maury S. Weiner
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This the 17 day of April, 2006.

/s Rick A. Howard
OF COUNSEL